

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT,

OAH CASE NO. 2012100258

ORDER GRANTING REQUEST FOR
CONTINUANCE OF:

PREHEARING CONFERENCE TO
FEBRUARY 4, 2013 AT 1:30 P.M.; AND
DUE PROCESS HEARING TO
FEBRUARY 11, AT 1:30 P.M. AND
FEBRUARY 12 AND 13, AT 9:30 A.M.,
CONTINUING DAY TO DAY

Student filed her due process hearing request (complaint) on October 5, 2012, alleging issues giving rise to District's denial of a free and appropriate public education (FAPE) spanning the 2009-2010, 2010-2011, and 2011-2012 school years. The matter was set for hearing beginning November 29, 2012, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge (ALJ).

On November 14, 2012, the parties filed a joint request to continue the dates to March 18 through March 20, 2013, with a prehearing conference on March 6, 2013. The parties have not requested a mediation date. The parties based their request upon their unavailability to proceed earlier.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other

pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances.

The parties have failed to provide good cause for their request to continue the matter for almost six months after the initial filing date, and four months from the initial hearing date.

Good cause exists to grant the parties a short continuance as they have not previously asked for a continuance.

For these reasons, the parties joint motion to continue is granted, but OAH shall only order a reasonable continuance as follows, with further continuances disfavored:

Prehearing Conference: February 4, 2013 at 1:30 p.m.

Due Process Hearing: February 11, 2013, at 1:30 p.m., February 12, 2013, February 13, 2013, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: November 14, 2012

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings